IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2830 OF 2006

1. Rupali Dattatrya Zurange
and Ors. .....Petitioners.

V/s

1. The State of Maharashtra & Ors. .....Respondents.

ALONGWITH
WRIT PETITION NO. 2819 OF 2006

1. Smt. Anita Ramchandra Bhujbal
and Ors. ....Petitioners.

V/s

1. The State of Maharashtra & Ors. ....Respondents.

ALONGWITH
WRIT PETITION NO.4975 OF 2006

1. Smt. Surekha Pandurang Soyam
and Ors. ....Petitioners.

V/s

1. The State of Maharashtra & Ors. ....Respondents.

ALONGWITH
WRIT PETITION NO.4981 OF 2006

1. Smt. Arati Avadhut Kamat
and Ors. ....Petitioners.

V/s

1. The State of Maharashtra & Ors. .....Respondents.

ALONGWITH
WRIT PETITION NO.5317 OF 2006

1. Smt. Ratnamala Haribhau Jadhav
and Ors. .....Petitioners.

V/s

1. The State of Maharashtra
and Ors. .....Respondents.

ALONGWITH
WRIT PETITION NO.5318 OF 2006

1. Smt. Kirti Badriprasad Tiwari
and Ors. ....Petitioners.

V/s

1. The State of Maharashtra
and Ors. ....Respondents.

ALONGWITH
WRIT PETITION NO.5607 OF 2006

1. Smt. Rekha Bhiwaji Morey
and Ors. ....Petitioners.

V/s

2. The State of Maharashtra
and Ors. ....Respondents.

ALONGWITH
WRIT PETITION NO. 5644 OF 2006

1. Smt. Shakeela Dilawar Gorwade
and Anr. .....Petitioners.

V/s.

1. The State of Maharashtra and Ors. .....Respondents.

ALONGWITH
WRIT PETITION NO.5654 OF 2006

Smt. Janabai Govind Chikane .....Petitioner.

V/s

1. The State of Maharashtra and Ors. .....Respondents.

ALONGWITH
WRIT PETITION NO. 4241 OF 2006
[Mentioned, not on Board]

1. Smt. Jyoti Pralhad Bhowar and Ors. .....Petitioners.

V/s.

1. The State of Maharashtra and Ors. .....Respondents.

Mr. Girish Kulkarni with Mr. Anilkumar Joshi for the Petitioners in Writ Petition Nos. 2830/06, 2819/06, 4975/06, 4981/06, 5317/06, 5318/06, 5607/06, 5644/06 and 4241/06.

Mr. P.J.Prasada Rao for the Petitioner in Writ Petition No.5654/06.

Mr. R.D. Rane, G.P for the Respondent Nos. 1 to 3 in all the above Writ Petitions.

Mr. Ganjendrasinh Jadhav for the Respondent No.4 in all the above Writ Petitions.

CORAM: DR. S. RADHAKRISHNAN &
V. M. KANADE, JJ.

DATE : 24TH AUGUST, 2006

P.C.:

1. Heard learned Counsel for the Petitioners, learned Government Pleader for the Respondent Nos. 1, 2 and 3 and learned Counsel for the Respondent No.4.

2. In the above Petitions, all the Petitioners after completing their Auxiliary Nursing and Midwifery Course were appointed by the Respondent No. 4 - Zilla Parishad in various rural hospitals as Auxiliary Nurse and Midwifes.

3. We have perused the appointment letters which are annexed as Exhibit-B collectively to the Petition. In the appointment letters, it is categorically mentioned as under:-

> "The said appointment is only for two years period and the service of the candidate will be terminated on the expiry of the said period and no

> complaint or difficulty will be entertained in this regard. It will be the responsibility of the concerned medical officer to relieve the candidate on expiry of the said period."

One of the terms and conditions of appointment is as under:-

> "1) The aforesaid appointment is ad-hoc and temporary. The said appointment may be terminated without any advance notice."

4. Learned Counsel appearing on behalf of the Petitioners sought to contend that though the appointment letter suggests that the appointment was only for a period of two years, whereas their services ought not to be terminated after expiry of two years and that they should be allowed to continue.

5. Learned Counsel appearing on behalf of the Respondent No.4 referred to the affidavit-in-reply filed on behalf of the Zilla Parishad wherein it is clearly mentioned that the

Petitioners were all posted temporarily on contractual basis for a period of two years and this was in pursuance of the policy of admission to the Course of Auxiliary Nursing and Midwifery (A.N. & M.) In pursuance of the said policy, Auxiliary Nurses and Midwifes are appointed in various Civil Hospitals and they are asked to execute a bond in the sum of Rs 3000/- as a guarantee that they would serve in the said rural Hospitals for a period of two years after completion of their training. The object of the above policy, it is mentioned in the affidavit, is that the services of trained Nurses and Midwifes are made available to the residents in the rural and hilly tribal areas where, otherwise, health services would not be available easily. Learned Counsel for the Respondent No.4 also brought to our notice in para 8 of the said affidavit-in-reply that the Petitioners are entitled to apply before the District Selection Committee, Pune and if they are selected they will be allowed to continue in the said posts.

6. Learned Counsel for the Respondent No.4 also brought to our notice a recent judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs.

Umadevi and Others, reported in **2006(4) SCALE 197** wherein this issue has been squarely dealt with by the Constitutional Bench of the Supreme Court in para 36 which reads as under:-

> "36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of

appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that

one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of

opportunity enshrined in Article 14 of the Constitution of India."

7. Under the aforesaid circumstances of the case and in view of the clear factual position that the Petitioners were appointed purely on temporary basis that too for a specific period of two years on contractual basis, they have no right or lien of whatsoever nature with regard to the said posts and also in view of the aforesaid judgment of the Supreme Court, the Petitioners have absolutely no right to continue in the said posts after completion of the said period of two years. However, we make it clear that the Petitioners are entitled to appear before the District Selection Committee and after they are duly selected then Zilla Parishad may consider them for the said posts of Auxiliary Nurse & Midwife.

8. In view of the above, there is no substance in the above Petitions. All the above Petitions are accordingly dismissed.

(DR. S. RADHAKRISHNAN, J.)

(V. M. KANADE, J.)